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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/810,393

03/25/2004

Roger A. Farrara

8987

41313

7590

07/07/2006

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EXAMINER

MATTHEWS, TERRELL HOWARD

ART UNIT

PAPER NUMBER

3654

DATE MAILED: 07/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/810,393

Applicant(s)

FARRARA ET AL.

Examiner

Terrell H. Matthews

Art Unit

3654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 5-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

FINAL REJECTION

Applicant's arguments filed 4/26/2006 have been fully considered but they are not persuasive for reasons as detailed below.

The prior art rejections are maintained or modified as follows:

Claim Objections

Applicant is advised that should claims 7,11 be found allowable, claims 8,12 will be objected to under 37 CFR 1.75 as being a substantial duplicates thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5- 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yeo (US-6244390) in view of Danneker (US-5984058) in further view of Lee (US-6805221)

Referring to claims 5-6,9-10,13 Yeo discloses an "In Ground Lift" as claimed. See Figs. 1-21 and respective portions of the specification. Yeo further discloses an automotive lifting system (10) having a lifting arm (180) having a substantially rectangular end; a cushioning apparatus (See at least Col. 5 l. 58-60) for attaching to the substantially rectangular end of the lifting arm. Yeo does not disclose that the cushioning apparatus is a solid body of resilient material having a plurality of exterior surfaces and a front section, two adjacent side sections substantially perpendicular to the front section, and a bottom section substantially perpendicular to the side sections and the front section; or an attachment means for affixing the cushioning apparatus to the substantially rectangular square end of the automotive lift system or that the cushioning apparatus contains indicia disposed on an exterior surface . It should be noted however that it is broadly construed and generally understood that the support pads or of a resilient material. Danneker discloses a "Cushioned Braking System" as claimed. See Figs. 1-7 and respective portions of the specification. Danneker further discloses an arm (14), an end cap (18) and a cushioning apparatus for attaching to the rectangular end comprising a solid body of resilient material having a plurality of exterior surfaces and a front section, two adjacent side sections substantially perpendicular to the front section, and a bottom section substantially perpendicular to the side sections and the front section as well as an attachment means for fixing the cushioning apparatus to the substantially rectangular end of the arm (See at least Col 5 l. 15-22 &

Fig 1). It should be noted that Danneker discloses an arm (14) as substantially cylindrical, circular, or of semi-circular end. Lee discloses a "Ladder Positioning System" as claimed. See Figs. 1-11 and respective portions of the specification. Lee further discloses a lifting arm (14) with an end cap (24). Furthermore, Lee discloses that the end cap (24) is provided with an elastomeric pad (31) and that the end cap is provided with an attachment means (26) for affixing the cushioning apparatus (31) to a substantially rectangular arm (14) (See at least Col. 5 l. 20-29 & at least Figs. 2,11). It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the apparatus of Yeo to include a cushioning apparatus of a resilient material as taught by Danneker and Lee to be attached to the end of a lift arm so that the lift arm could be provided with a padded cushion to protect the arm from scratching or interfering with the lifted item in addition to providing a soft cushion for protection against accidents. Additionally, it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the apparatus of Yeo to include indicia on the exterior surface of the cushioning apparatus to indicate which respective side the end cap was supposed to be placed.

Referring to claims 7-8,11-12. Yeo does not disclose wherein the solid body of resilient material is comprised of at one member from the group consisting of expanded foam, rubber, extruded foam rubber, sponge foam, polyurethane foam, integral skin foams, rigid closed cell, integral flexible open cell, expanded polystyrene and compression-molded, closed cell cross-linked polyethylene. Danneker discloses the invention as described above in detail. Danneker further discloses wherein the solid

body of resilient material comprises polyurethane foam (See at least Col. 5 l. 15-22). It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the apparatus of Yeo to include the teachings of Danneker and include a end cap with a solid body of resilient material comprised out of urethane foam to provide a soft cushioning for the end cap to protect and provide safety from accidents and prevent injuries from people coming into contact with the lift arm.

Response to Arguments

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to a person of ordinary skill in the art to provide end caps for protecting the lift arm from scratching objects being lifted, to provide it with more durability, and in addition to provide protection from those coming into contact with the lift arm.

In response to applicant's argument that the prior art does not teach lessening the effect or extent of injuries to a person caused by contact with the end of the hoist lift arm, a recitation of the intended use of the claimed invention must result in a structural

difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Consequently, as review of the prior art undermines applicant's arguments, the claims stand rejected.

Examiner has maintained the prior art rejections, statutory rejections and drawing objections as previously stated and as modified above. Applicants' amendment necessitated any new grounds of rejection present in this Office action

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

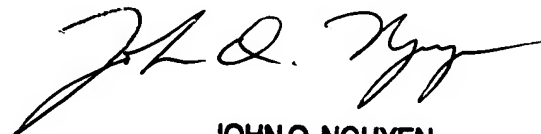
Any references not explicitly discussed above but made of record are considered relevant to the prosecution of the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terrell H. Matthews whose telephone number is (571)272-5929. The examiner can normally be reached on M-F 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathy Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

THM



**JOHN Q. NGUYEN
PRIMARY EXAMINER**